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IN THE

Supreme Court of the United States

October Term, 1961

No. 751

RAYMOND D. BROWN,

Appellant,

against

SGT. JAMES KETCH,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW JERSEY

JURISDICTIONAL STATEMENT

RAYMOND D. BROWN,
Appellant,
107 Mechanic Street,
Boonton, New Jersey.

INDEX

	PAGE
Jurisdictional Statement:	
Opinions Below	1
Jurisdiction	2
Statutes Involved	3
Questions Presented	3
Statement of Case	4
The Questions Are Substantial	5
APPENDIX:	
Notice of Motions	7
Briefs in Support of Motions for New Trial, or for Order to Use Statement	9
Medical Statement	12
Letter from Paul Bangiola	13
Order Denying Motion for New Trial	14
Order of Dismissal for Failure to Prosecute Appeal	15

Table of Cases Cited

Midler v. Heinowitz, 10 N. J. 123, 89 A. 2d 458 (1952)	2, 3
Aero Mayflower Transit Co. v. Board of R. R. Com'rs of State of Mont., 332 U. S. 495, 68 S. Ct. 167	2
Miller v. Lancaster Bank, 1 S. Ct. 536, 106 U. S. 542	2
Burthe v. Danis, 10 S. Ct. 335, 133 U. S. 514	2, 3
Cornell Steamboat Co. v. Phoenix Const. Co., 34 S. Ct. 701, 233 U. S. 593	3
Murdock v. Commonwealth of Pa., 63 S. Ct. 870, 319 U. S. 105	3

Statutes Cited

	PAGE
New Jersey Constitution (1947):	
Article 6, Section 5, Paragraph 2, Page 562	2, 3
Constitution of the United States:	
Amendment XIV, Section 1	2, 3
Title 28, United States Code, Section 1257(2)	2

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JURISDICTIONAL STATEMENT

This statement is submitted to show that the Supreme Court of the United States has jurisdiction of the appeal, and that substantial questions are presented.

Opinions Below

The Supreme Court of New Jersey failed to deliver any opinion on the Record on Appeal.

Jurisdiction

This proceeding was instituted by the appellant, Raymond D. Brown, pursuant to the New Jersey Constitution (1947), Article 6, Section 5, Paragraph 2, Page 562, and the Constitution of the United States, Amendment XIV, Section 1, to secure a new trial against the appellee, Sgt. James Ketch. The appellant's contention is that the State Supreme Court's altogether denal of the Record of Appeal, was in direct violation of the New Jersey statute which grants one the right to appeal. *Midler* v. *Heinowitz*, 10 N. J. 123, 89 A. 2d 458 (1952); *Aero Mayflower Transit Co.* v. *Board of R. R. Com'rs of State of Mont.*, 332 U. S. 495, 68 S. Ct. 167. In the latter case cited, the United States Supreme Court was bound by the construction given to state statute by state court. The State Supreme Court order was also repugnant to the Constitution of the United States. *Miller* v. *Lancaster Bank*, 1 S. Ct. 536, 106 U. S. 542.

The appeal herein is taken from the final order of the Supreme Court of New Jersey, made and entered on October 30, 1961, denying motions for a new trial, or for an order to permit a statement in lieu of record to be used without the appellee's signature. The appellant contended that the appellee's actions blocked his appeal, and that his handicap prevented fair argument. The former plea is supported by the New Jersey statute granting one's right to appeal—Article 6, Section 5, Paragraph 2, page 562, while the latter plea is supported by Amendment XIV, Section 1, of the United States Constitution. The Notice of Appeal was filed on November 21, 1961, in the Supreme Court of New Jersey.

The jurisdiction of the Supreme Court to review the decision herein by direct appeal is conferred by Title 28, United States Code, Section 1257(2). The following decisions sustain the jurisdiction of the Supreme Court to review the order herein on direct appeal. *Burthe* v. *Danis*,

10 S. Ct. 335, 133 U. S. 514 (case: Right under Statute); *Cornell Steamboat Co.* v. *Phoenix Const. Co.*, 34 S. Ct. 701, 233 U. S. 593 (case: Denial of Right of Action); *Murdock* v. *Commonwealth of Pa.*, 63 St. Ct. 870, 319 U. S. 105 (case: Due Process of Law).

Statutes Involved

New Jersey Statute on Right to Appeal:

New Jersey Statutes Annotated—Constitution 1947, Article 6, Section 5, Paragraph 2, page 562 provides:

> "The New Jersey court system contemplates one Appeal as of right to a court of general appellate jurisdiction, and such appeal is usually afforded in the Appellate Division of the Superior Court. * * *" *Midler* v. *Heinowitz*, 10 N. J. 123, 89 A. 2d 458 (1952).

United States Constitution:

Amendment XIV, Section 1 provides:

> "States are prohibited from abridging privileges or immunities of citizens of the United States, or depriving any person of due process of law or equal protection of the laws."

Questions Presented

The questions presented by this appeal are as follows:

In so far as Amendment XIV, Section 1 provides due process of law to all citizens, and Article 6, Section 5, Paragraph 2 of the New Jersey Constitution contemplates an appeal as a matter of right:

(1) Did the appellant's handicap entitle him to a new trial?

(2) Should the appellant have been permitted to use the Statement in Lieu of Record as it was, even though appellee refused to sign it, since the appellee failed to cite any errors?

(3) Can blocking the appellant's appeal be considered a tort, and a new trial be awarded on a motion, because of what said tort signifies (recall that the trial court's judgment was, "No claim.")?

(4) Did the State Supreme Court have any right to deny the motions, when no answering brief was submitted by the appellee?

Statement of Case

Following a "No claim" judgment in a Superior Court of New Jersey, during which the appellant herein was handicapped by a hearing loss, said party filed Notice of Appeal in the Appellate Division of the Superior Court, contemplating use of an Agreed Statement in Lieu of Record, to file the Record on Appeal. Said statement was submitted to the appellee herein, who objected to its use without being able to cite any plausible errors, and who also refused further discussion of the matter.

Since the appellee's actions violated the basic principle of the Agreed Statement provision, and blocked the appeal, the motions which are presently the Record on Appeal were submitted to the State Supreme Court while said appeal was still pending, where they were denied. On November 29, 1961, the appeal was dismissed for failure to prosecute—the reason being that the appellant had been unable to file the Record on Appeal, since his adversary had refused to sign the Statement in Lieu of Record.

It is of the utmost importance for this Court to understand that the statement aforementioned, was not necessary to make the motions, as it would have been to make the appeal. The explanation for this, is that the appeal from the trial court was being taken from the complaint, whereas the motions were derived from the appellant's handicap, and the tort done when said appeal was blocked.

The Questions Are Substantial

The basic question presented by this appeal, is whether the party aggrieved was afforded due process of law in the trial court proceedings, and in his attempt to make an appeal.

By denying the motions herein appealed, the State Supreme Court violated Article 6, Section 5, Paragraph 2, of the Constitution of New Jersey, and said denial was repugnant to Amendment XIV, Section 1, of the Constitution of the United States. The Supreme Court of the United States can easily ascertain, that if the State Supreme Court did not care to award the appellant an outright new trial, it at least could have permitted him to use the Statement in Lieu of Record, so that the appeal might have been made. Since it is far too late to accomplish the appeal, the appellant prays that this Court will award a new trial.

Respectfully submitted,

RAYMOND D. BROWN,
Appellant.

APPENDIX

Notice of Motions

To:

Mr. Paul Bangiola, Counsellor at Law,
555 Speedwell Avenue,
Morris Plains, New Jersey,
Attorney for Defendant.

Sir:

Take notice that the plaintiff will move before the Supreme Court of New Jersey, at the Court House in Trenton, New Jersey, on Monday, October 16, 1961 at 10:00 o'clock in the forenoon, or as soon thereafter as possible, for an Order, the nature of which is herein described.

The plaintiff, Raymond D. Brown, residing at 107 Mechanic Street, in the town of Boonton, Morris County, New Jersey, respectfully moves the Court to consider the following facts:

(1) The plaintiff, who is deaf, missed a key statement made by the trial court in defense of the defendant, on account of the failure of the person in his company to write what was said until after the hearing. Therefore, he was unable to give a testimony which to his knowledge, and possibly the defendant's, would have prevented dismissal of his case by a "No claim" judgment, which was made when his summons had not been served in time.

(2) The plaintiff was is attempting to appeal (Docket # A 950-60) the "No claim" judgment (Superior Court # J 13367-60). Since the transcript does not contain the entire proceedings, because they were not read aloud, he was is relying on using an Agreed Statement in Lieu of

Record, since the rules do not obligate use of the transcript anyway. A Statement was submitted to the defendant's attorney, who objected to its use without being able to cite any plausible errors, and who also refused further discussion of the matter.

THEREFORE, the plaintiff respectfully moves the Court to either:

(1) Grant a new trial on the grounds that his handicap prevented fair argument by the party aggrieved, or (2) Grant a new trial on the grounds that the respondent's attorney attempted to block the Appeal, which indicates that the trial court's judgment was erroneous, but was possible on account of plaintiff's handicap, or (3) Grant an Order permitting use of the Statement in Lieu of Record without the respondent's signature, on the grounds that since no errors could be cited, the appellant should be permitted to use it.

In support of these Motions, I will rely upon the rules of this Court and the Briefs, letters, and affidavit annexed hereto.

RAYMOND D. BROWN,
Plaintiff.

Dated: September 30, 1961.

Briefs in Support of Motions for New Trial, or for Order to Use Statement

The following is a memorandum in support of my Motions for either a new trial, or for an Order permitting a Statement in Lieu of Record to be used without the respondent's signature.

POINT I

The Medical Statement annexed hereto should be sufficient to support the plaintiff's allegation of being handicapped.

POINT II

The respondent failed to cite any plausible errors in the Statement to which he objected being filed, and also refused further discussion.

R.R. 1:6-3 provides *inter alia*:

> "The respondent may serve objections with suggested amendments within ten days."
>
> This rule also provides, that whenever a simple issue is being appealed, an Agreed Statement in Lieu of Record may be used.

Even though this rule does not seem obligatory on the respondent, the Court can easily ascertain that the concept of the rule and its cross-references, is to provide a flexible means for filing the procedures of the case from which the Appeal is taken. Therefore, when one party wishes to appeal using a Statement, it should be mandatory that his adversary co-operate by citing any errors, so that corrections and/or amendments can be made, and an agreement reached. The Court should understand that objecting to the Statement being filed does not necessarily mean that the respondent disagrees with its contents. His actions can

only be interpreted as an attempt to block the Appeal, since no plausible errors could be cited, and his co-operation was withheld. In support of this point, I will rely upon the copy of his letter annexed hereto. The reasons cited for refusal to consent to the Statement are not valid for the following reasons:

(1) The District Court action mentioned (Morris Co. Case SC 1390), was dismissed in favor of another defendant—Sgt. Ketch not being a co-defendant.

(2) Even though the action against Sgt. Ketch was dismissed, the "No claim" dismissal did not give his attorney the right to block the plaintiff's Appeal.

POINT III

(1) These Motions could not be made within ten days.

(2) It is not essential that the issue before the trial court be aired herein for proper appraisal of this Action.

R.R. 1:1-8 (Relaxation of Rules) provides *inter alia*:

> "The rules of this Court shall be considered as general rules • • •"
>
> The concept of this rule, is to provide a means for the administration of justice when strict adherence to the rules would prevent it.

(1) Since an Appeal was planned, these Motions could not be made within the prescribed period following the hearing. There was no intention of attempting to win a new trial via this type of action until the respondent's actions blocked the Appeal.

(2) Upon careful consideration, the Court can readily ascertain that this Action does not have to be supported by the Transcript nor a Statement, since it is well-founded regardless of the issue presented to the trial court. The above cited rule is being relied upon to support this point.

Conclusion

Since the Medical Statement verifies that the plaintiff is handicapped, and the letter shows that the defendant co-operated poorly, in an obvious attempt to block the Appeal, the plaintiff should be awarded a new trial on these grounds, or he should be permitted to use the Statement in Lieu of Record, without the respondent's signature, so that the Appeal can be made. Although it is expected that the Court will grant a new trial, if only the Motion regarding the Statement is granted, the plaintiff requests that the period of thirty-days for filing the Briefs on Appeal, run from October 16, 1961, instead of from the day that the Notice of Appeal was filed.

Respectfully submitted,

Raymond D. Brown, Plaintiff

Dated: Sept. 30, 1961

Medical Statement, Annexed to Foregoing Briefs

JOSEPH A. ALCARO, M. D.
55 Maple Avenue
Morristown, New Jersey

JEfferson 8-5445

September 25, 1961

TO WHOM IT MAY CONCERN:

This is to certify that Raymond D. Brown has been under my care from 8 21 50 until 9 23 59 for:

1. Allergic Rhinitis
2. Neuro-Sensory Type Deafness

• • •

JOSEPH A. ALCARO, M. D.

JAA:ras

Letter from Paul Bangiola, Annexed to Foregoing Briefs

PAUL BANGIOLA
Counsellor at Law
555 Speedwell Avenue
Morris Plains, New Jersey

JEfferson 8-2266

August 16, 1961

Mr. Raymond D. Brown
P. O. Box 236
Boonton, New Jersey

Re: Brown vs. Ketch
Docket No. L. 13414-60
Our file No. 3626-61

Dear Mr. Brown:

I have your letter of August 8, 1961 and since I am convinced your case has no merit, in view of the fact that both your District Court action and the case against Mr. Ketch were dismissed, I do not desire to discuss this matter further and will not consent to any Statement.

Very truly yours,

PAUL BANGIOLA
By H. R. V. H.

PB:MC

Order Denying Motion for New Trial

(Filed October 30, 1961)

This matter having been duly presented to the Court, it is Ordered that the motion for new trial, etc., is denied.

Witness, the Honorable Joseph Weintraub, Chief Justice, at Trenton, this thirtieth day of October 1961.

JOHN H. GILDEA,
Clerk.

Filed Oct. 30, 1961
JOHN H. GILDEA,
Clerk.

A True Copy

JOHN H. GILDEA,
Clerk.

Order of Dismissal for Failure to Prosecute Appeal

(Filed November 30, 1961)

This matter coming on to be heard on the 13th day of November, 1961, on the motion of this Court to dismiss pursuant to Rule A-11 for want of prosecution, on due notice to the attorneys of the parties, and no cause being shown to the contrary;

It is ordered on this 29 day of November, 1961, that this cause is dismissed.

For the Court:

s Harold A. Price,
S. J. A. D.

Original Filed Nov. 30, 1961

I. Grant Scott,
Clerk.

I hereby certify that the foregoing is a true copy of the original on file in my office.

I. Grant Scott,
Clerk.